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8 **IN THE UNITED STATES DISTRICT COURT**
9 **FOR THE DISTRICT OF ARIZONA**
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11 Alfred Green,

12 Plaintiff,

13 v.

14 Corizon Health Services, et al.,

15 Defendants.
16

No. CV-18-00068-TUC-RM

ORDER

17 Pending before the Court are Plaintiff's Motion to Appoint Counsel (Doc. 172),
18 Motion to Appoint Counsel (Doc. 173), Motion Requesting Leave of Court to Reopen
19 Discovery to New Evidence (Doc. 174), Motion Requesting Leave of Court Ordering
20 Centurion to Compel (Doc. 175), and Motion to Compel (Doc. 183). Defendants
21 responded in opposition to the Motion Requesting Leave of Court to Reopen Discovery
22 to New Evidence. (Docs. 177, 178.) Defendant Shinn responded in opposition to the
23 Motion Requesting Leave of Court Ordering Centurion to Compel and the Motion for
24 Leave to File Motion to Compel. (Doc. 179.) The Motions will be denied.

25 **I. Motions to Appoint Counsel (Docs. 172, 173)**

26 Briefing on both parties' Motions for Summary Judgment was completed on May
27 20, 2021. (*See* Doc. 167.) The Court has previously denied several of Plaintiff's motions
28 requesting appointment of counsel in this case. (*See* Docs. 41, 91, 94, 99, 141.) In its

1 most recent Order denying Plaintiff's requests for counsel, the Court stated that it would
2 entertain a motion for appointment of counsel following resolution of the dispositive
3 motions. (Doc. 141 at 3.)

4 In his First Motion to Appoint Counsel, Plaintiff requests appointment of counsel
5 for the same reasons previously set forth in his Motions to Supplement (Docs. 156-161),
6 namely, that he recently saw a therapist for treatment of nerve and/or musculoskeletal
7 pain and now seeks to introduce evidence relating to the therapeutic treatment he
8 received. (Doc. 172.) He argues that a lawyer would have more success at obtaining and
9 introducing this new evidence than he would. (*Id.*) The Court previously denied
10 Plaintiff's Motions to Supplement because Plaintiff had not provided good cause for the
11 requested supplemental briefing after the expiration of the relevant dispositive motion
12 deadlines. (Doc. 167.) In his second Motion to Appoint Counsel, Plaintiff asks the Court
13 to appoint Benjamin Taylor, whom he alleges is an attorney based in Phoenix, Arizona,
14 to represent him in this matter. (Doc. 173.)

15 There is no constitutional right to the appointment of counsel in a civil case. *See*
16 *Ivey v. Bd. of Regents of the Univ. of Alaska*, 673 F.2d 266, 269 (9th Cir. 1982). In
17 proceedings in forma pauperis, the court may request an attorney to represent any person
18 unable to afford one. 28 U.S.C. § 1915(e)(1). Appointment of counsel under 28 U.S.C. §
19 1915(e)(1) is required only when "exceptional circumstances" are present. *Terrell v.*
20 *Brewer*, 935 F.2d 1015, 1017 (9th Cir. 1991). A determination with respect to exceptional
21 circumstances requires an evaluation of the likelihood of success on the merits as well as
22 the ability of the plaintiff to articulate his claims pro se in light of the complexity of the
23 legal issue involved. *Id.* "Neither of these factors is dispositive and both must be viewed
24 together before reaching a decision." *Id.* (quoting *Wilborn v. Escalderon*, 789 F.2d 1328,
25 1331 (9th Cir. 1986)).

26 Having denied Plaintiff's Motions to Supplement and having considered the
27 factors for appointment of counsel, the Court finds no basis upon which to grant the
28 requests for appointment of counsel at this time. Furthermore, the Court will not grant

1 Plaintiff's request that it appoint Benjamin Taylor as his attorney without additional
2 information about Mr. Taylor's willingness and ability to represent Plaintiff in this
3 litigation. If Mr. Taylor has agreed to represent Plaintiff in this action, he may file a
4 Notice of Appearance. *See* LRCiv 83.3(a).

5 **II. Motion to Reopen Discovery (Doc. 174)**

6 In his Motion to Reopen Discovery (Doc. 174), Plaintiff seeks to reopen discovery
7 so that he may submit new evidence regarding therapeutic treatment he received in
8 March and April of 2021 for his injuries. Plaintiff avers that the therapist's medical
9 reports contain "pertinent information" which would "prove that [he] has permanent
10 nerve damage that has gone untreated." (*Id.*) Defendants oppose the Motion because (1)
11 Plaintiff has not shown good cause to extend deadlines that have already expired, (2)
12 dispositive motions are currently pending before the Court, and (3) the Court previously
13 denied Plaintiff's requests to supplement the summary judgment briefing with new
14 evidence. (Doc. 177, *see also* Doc. 167.)

15 Plaintiff has presented no compelling reasons for reopening discovery after
16 completion of briefing on dispositive motions. *See Johnson v. Mammoth Recreations,*
17 *Inc.*, 975 F.2d 604, 609 (9th Cir. 1992) (party seeking to modify or extend pretrial
18 deadlines must show good cause for doing so). Furthermore, the Court has already denied
19 identical requests and Plaintiff has presented no new facts or circumstances that would
20 change the Court's analysis in its previous Order (Doc. 167). Accordingly, the Motion
21 will be denied.

22 **III. Motions to Compel (Docs. 175, 183)**

23 In his Motion Requesting Leave of Court Ordering Centurion to Compel, Plaintiff
24 seeks to have the Court order Centurion to produce records from his therapy visits. (Doc.
25 175.) Plaintiff contends that he requested these records but has not received them and that
26 they contain information pertinent to his medical conditions. (*Id.*) In his Motion to
27 Compel to Release Plaintiff's Medical Therapist Reports, Plaintiff repeats his request for
28 production of the records from his therapy visits. (Doc. 183) He states that his therapist

1 stopped providing treatment after he experienced pain from the treatment and that he
2 needs to know why treatment was stopped. (*Id.*) He further states that he submitted a
3 Health Needs Request Form, as well as three separate medical release forms, requesting
4 copies of the therapy records and has not received them. (*Id.*)

5 Defendant Shinn responded in opposition to the Motions. (Doc. 181.) In response,
6 Defendant Shinn argues that (1) Centurion is not a party in this case and there is no
7 indication or evidence that a subpoena or other request to Centurion for the records has
8 been made; (2) Plaintiff has access to his own medical records and it is not clear that he
9 has followed the procedure for obtaining those records; and (3) the deadline for
10 discovery-related motions has passed and summary judgment briefing is pending, and the
11 Court has already rejected Plaintiff's similar or identical discovery requests on that basis.
12 (*Id.*)

13 Centurion is not a party in this case and Plaintiff has provided no evidence of a
14 subpoena or other record request to Centurion that has gone unanswered. Furthermore,
15 the discovery deadlines in this case passed months ago and summary judgment briefing is
16 currently pending before the Court. For these reasons as well as the reasons set forth
17 above regarding Plaintiff's Motion to Reopen Discovery, the Motions to Compel will be
18 denied.

19 Accordingly,

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1 **IT IS ORDERED** that Plaintiff's Motion to Appoint Counsel (Doc. 172), Motion
2 to Appoint Counsel (Doc. 173), Motion Requesting Leave of Court to Reopen Discovery
3 to New Evidence (Doc. 174), Motion Requesting Leave of Court Ordering Centurion to
4 Compel (Doc. 175), and Motion to Compel (Doc. 183) are **denied**.

5 Dated this 3rd day of September, 2021.

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11 Honorable Rosemary Márquez
12 United States District Judge
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